

ADMINISTRATIVE MESSAGE

ROUTINE

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FM CNO WASHINGTON DC//N1//

TO NAVADMIN

UNCLAS //N05800//

NAVADMIN 065/03

MSGID/GENADMIN/CNO WASHINGTON DC/-/MAR//

REF/A/DOC/NDAA2002/28DEC2001//

REF/B/DOC/OSD/02MAY2002//

REF/C/DOC/JAGMAN/20AUG2001//

NARR/REF A IS SECTION 642, NATIONAL DEFENSE AUTHORIZATION ACT OF FISCAL YEAR 2002, PUBLIC LAW 107-107, DECEMBER 28, 2001, WHICH EXPANDED BENEFITS AND COVERAGE UNDER THE UNIFORMED SERVICES SURVIVOR BENEFIT PLAN (SBP). REF B IS OSD (FMP) MEMORANDUM "SURVIVOR BENEFIT PLAN (SBP) ANNUITIES WHEN MEMBER DIES ON ACTIVE DUTY." REF C IS MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN), WHICH CONTAINS DON REGULATIONS FOR ADMINISTRATIVE INVESTIGATIONS AND LINE OF DUTY DETERMINATIONS.//

RMKS/1. THIS NAVADMIN ESTABLISHES POLICY, PROCEDURES, AND RESPONSIBILITIES FOR MAKING LINE OF DUTY DETERMINATIONS WHEN AN ACTIVE-DUTY SERVICE MEMBER OF THE USN DIES.

2. REF A MODIFIED THE SURVIVOR BENEFIT PLAN (SBP) PROGRAM IN TWO IMPORTANT WAYS: FIRST, SBP BENEFITS ARE NOW PAYABLE TO A QUALIFIED SURVIVOR WHEN AN ACTIVE DUTY SERVICE MEMBER DIES IN THE LINE OF DUTY, REGARDLESS OF WHETHER THE SERVICE MEMBER WAS RETIREMENT ELIGIBLE AT THE TIME OF DEATH. SECOND, THE SBP ANNUITY PAYABLE TO A QUALIFIED SURVIVOR (IF THE ACTIVE DUTY SERVICE MEMBER DIES IN THE LINE OF DUTY) WAS INCREASED.

3. SBP ANNUITIES ARE CALCULATED AS A PERCENTAGE OF THE SBP BASE AMOUNT. NORMALLY, THE ANNUITY IS EITHER 55 OR 35 PERCENT OF THE SBP BASE AMOUNT. WHEN AN ACTIVE DUTY DEATH IS DETERMINED TO BE IN THE LINE OF DUTY, THE SBP BASE AMOUNT IS EQUAL TO RETIRED PAY AS IF THE SERVICE MEMBER RETIRED WITH TOTAL (100 PERCENT) DISABILITY, WHICH IN TURN IS EQUAL TO 75 PERCENT OF THE MEMBER'S BASE PAY (FINAL OR HIGH-36 PAY). THUS, FOR AN ACTIVE DUTY DEATH DETERMINED TO BE IN THE LINE OF DUTY, THE CALCULATION OF THE SBP ANNUITY PAYABLE TO A QUALIFIED SURVIVOR WILL NORMALLY BE 55 PERCENT OF 75 PERCENT OF THE DECEASED SERVICE MEMBER'S FINAL OR HIGH-36 PAY.

4. REF A ONLY AFFECTS THE SBP ELIGIBILITY DETERMINATION OR ANNUITY

CALCULATION IN CASES DETERMINED TO BE IN THE LINE OF DUTY. FOR CASES DETERMINED TO BE NOT IN THE LINE OF DUTY, SBP ELIGIBILITY AND ANNUITY CALCULATIONS REMAIN IN EFFECT UNDER THE RULES THAT EXISTED PRIOR TO REF A. THAT IS, IF THE SERVICE MEMBER WAS NOT RETIREMENT ELIGIBLE AT THE TIME OF DEATH, THEN SBP IS INAPPLICABLE. IF THE SERVICE MEMBER WAS RETIREMENT ELIGIBLE AT THE TIME OF DEATH, AN SBP ANNUITY WILL BE PAID TO A QUALIFIED SURVIVOR, BUT WILL NOT BE COMPUTED ON THE BASIS OF A NOMINAL TOTAL DISABILITY RETIREMENT. RATHER, THE SBP BASE AMOUNT WILL BE COMPUTED ON THE RETIREMENT FOR SERVICE RULES THAT WOULD HAVE APPLIED IF THE SERVICE MEMBER HAD RETIRED AT TIME OF DEATH.

5. PER REF B, LINE OF DUTY DETERMINATIONS ARE NOW REQUIRED IN ALL ACTIVE DUTY DEATH CASES, RETROACTIVE TO 10 SEP 01.

A. "ACTIVE DUTY" IS DEFINED IN 10 U.S.C. 101(D)(1). IT INCLUDES RESERVE MEMBERS ON ACTIVE DUTY FOR ANNUAL TRAINING, WHETHER OR NOT THEIR ORDERS SPECIFY A PERIOD OF MORE THAN 30 DAYS. RESERVE MEMBERS SERVING PERIODS OF INACTIVE DUTY TRAINING ARE NOT INCLUDED.

B. "RETIREMENT ELIGIBLE" IS DEFINED IN 10 U.S.C. 1448(D)(1)(A). IT INCLUDES MEMBERS ELIGIBLE FOR RETIRED PAY; OR QUALIFIED FOR RETIRED PAY EXCEPT THAT THE MEMBER HAS NOT APPLIED FOR OR BEEN GRANTED THAT PAY, OR COMPLETED 20 YEARS OF ACTIVE SERVICE, BUT NOT YET ELIGIBLE TO RETIRE AS A COMMISSIONED OFFICER BECAUSE THE MEMBER HAS NOT YET COMPLETED 10 YEARS OF COMMISSIONED SERVICE.

C. "LINE OF DUTY" IS DEFINED IN SECTION 0223 OF REFERENCE C. SECTIONS 0223-0228 OF REFERENCE C, WHICH PREVIOUSLY APPLIED ONLY TO LINE OF DUTY DETERMINATIONS IN INJURY OR DISEASE CASES, NOW APPLY TO LINE OF DUTY DETERMINATIONS IN DEATH CASES. THUS, AN ACTIVE DUTY SERVICE MEMBER'S DEATH IS PRESUMED TO BE IN THE LINE OF DUTY, AND THAT PRESUMPTION CAN ONLY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE THAT THE DEATH:

(1) WAS THE RESULT OF THE SERVICE MEMBER'S OWN INTENTIONAL MISCONDUCT OR WILLFUL NEGLIGENCE, OR

(2) OCCURRED WHILE AVOIDING DUTY BY DESERTING, OR

(3) OCCURRED WHILE ABSENT WITHOUT LEAVE AND SUCH ABSENCE MATERIALLY INTERFERED WITH THE PERFORMANCE OF REQUIRED MILITARY DUTIES, OR

(4) OCCURRED WHILE CONFINED UNDER A SENTENCE OF COURT-MARTIAL THAT INCLUDED AN UNREMITTED DISHONORABLE DISCHARGE, OR

(5) OCCURRED WHILE CONFINED UNDER A SENTENCE OF A CIVIL COURT FOLLOWING A CONVICTION OF A FELONY OFFENSE.

D. "QUALIFIED SURVIVOR" IS DEFINED IN 10 U.S.C. 1448(D). IT INCLUDES, IN THE FOLLOWING ORDER OF PRECEDENCE: (1) A FORMER SPOUSE WITH A COURT ORDER REQUIRING SBP (10 U.S.C. 1448(D)(3)), (2) THE SURVIVING SPOUSE, OR (3) THE SERVICE MEMBER'S DEPENDENT CHILD(REN). A COURT ORDERED FORMER SPOUSE ANNUITY TAKES PRECEDENCE OVER ANY OTHER SBP ANNUITY PAYABLE BASED ON THE SERVICE OF THE DECEASED MEMBER. A MEMBER'S DEPENDENT CHILDREN QUALIFY TO RECEIVE AN ANNUITY WHEN A FORMER SPOUSE ANNUITY DOES NOT APPLY AND THERE IS NO SURVIVING SPOUSE OR THE SURVIVING SPOUSE LATER DIES. 10 U.S.C. 1448(D)(2). A MEMBER'S DEPENDENT CHILDREN ARE NOT QUALIFIED ANNUITANTS WHEN A SURVIVING SPOUSE LOSES ENTITLEMENT TO AN ANNUITY AS A RESULT OF A REMARRIAGE BEFORE AGE 55. NO OTHER PERSONS ARE QUALIFIED TO RECEIVE BENEFITS UNDER THIS NEW PROVISION OF THE SBP.

6. PROCESS. PER REF B, LINE OF DUTY DETERMINATIONS ARE NOW REQUIRED IN ALL ACTIVE DUTY DEATH CASES, RETROACTIVE TO 10 SEP 01. LINE OF

DUTY DETERMINATIONS IN DEATH CASES SHALL BE MADE AS FOLLOWS:

A. EACH ACTIVE DUTY DEATH SHALL BE SUBJECT TO, AT A MINIMUM, A PRELIMINARY INQUIRY IN ACCORDANCE WITH REF C. THE PRELIMINARY INQUIRY SHALL BE CONDUCTED BY THE COMMAND TO WHICH THE DECEASED MEMBER WAS ATTACHED (OR THE GAINING COMMAND FOR SERVICE MEMBERS WHO DIE IN TRANSIT). THE COMMAND CONDUCTING THE PRELIMINARY INQUIRY, OR HIGHER AUTHORITY, SHALL DECIDE WHETHER THE PRELIMINARY INQUIRY IS SUFFICIENT TO BASE A LINE OF DUTY DETERMINATION OR WHETHER THERE IS NEED FOR A FULL INVESTIGATION. IN MANY DEATH CASES, A PRELIMINARY INQUIRY CONSISTING OF A BASIC LETTER REPORT ATTACHED TO A MEDICAL RECORD ENTRY OR ACCIDENT REPORT WILL BE SUFFICIENT TO BASE A LINE OF DUTY DETERMINATION. THE PERMISSIBLE FINDINGS ARE (1) IN THE LINE OF DUTY AND NOT DUE TO THE MEMBER'S OWN MISCONDUCT (2) NOT IN THE LINE OF DUTY AND NOT DUE TO THE MEMBER'S OWN MISCONDUCT OR (3) NOT IN LINE OF DUTY AND DUE TO THE MEMBER'S OWN MISCONDUCT.

B. IF THE COMMAND COMPLETING THE PRELIMINARY INQUIRY OR INVESTIGATION IS NOT A GENERAL COURT-MARTIAL CONVENING AUTHORITY (GCMCA) WITH AN ASSIGNED STAFF JUDGE ADVOCATE (SJA), THE COMMAND WILL FORWARD THE INQUIRY/INVESTIGATION TO THE FIRST GCMCA IN ITS CHAIN OF COMMAND WITH AN ASSIGNED SJA. THE COMMAND WILL INCLUDE A WRITTEN RECOMMENDATION CONCERNING THE LINE OF DUTY DETERMINATION.

C. THE GCMCA WITH AN ASSIGNED SJA IS THE COGNIZANT OFFICIAL FOR MAKING THE FORMAL LOD DETERMINATION, SUBJECT TO A LIMITED REVIEW PROCESS DESCRIBED IN PARA F BELOW. THE GCMCA SHALL MAKE THE LINE OF DUTY DETERMINATION IN ACCORDANCE WITH THE GUIDANCE IN SECTIONS 0223-0228 OF REF C.

D. ADVERSE DETERMINATIONS. BEFORE MAKING A DETERMINATION THAT AN ACTIVE DUTY DEATH WAS NOT IN THE LINE OF DUTY, THE GCMCA OR THEIR SJA SHALL AFFORD A KNOWN POTENTIAL SBP BENEFICIARY THE OPPORTUNITY TO REVIEW THE REPORT OF INVESTIGATION AND PROVIDE RELEVANT INFORMATION TO THE GCMCA. A "KNOWN POTENTIAL SBP BENEFICIARY" IS THE PERSON WHO WOULD OTHERWISE BE THE RECOGNIZED QUALIFIED SURVIVOR IF A FAVORABLE DETERMINATION WERE MADE. THE NAVY SBP PROGRAM MANAGERS WILL PROVIDE ASSISTANCE FOR NAVY COMMANDS IN IDENTIFYING POTENTIAL BENEFICIARIES. ORDINARILY, THE KNOWN POTENTIAL SBP BENEFICIARY SHALL BE PROVIDED 30 CALENDAR DAYS FROM RECEIPT OF THE REPORT OF INVESTIGATION TO PROVIDE INFORMATION TO THE GCMCA. IN AN ADVERSE DETERMINATION CASE IN WHICH THERE IS NO KNOWN POTENTIAL SBP BENEFICIARY, THE GCMCA SHALL MAKE THE LINE OF DUTY DETERMINATION FOLLOWING A REVIEW OF THE INVESTIGATION BY THE SJA.

E. THE LOD DETERMINATION SHALL BE MADE IN WRITING BY THE GCMCA AND FORWARDED TO COMMANDER, NAVY PERSONNEL COMMAND (PERS-62), 5720 INTEGRITY DRIVE, MILLINGTON, TN 38055-6220 OR HQMC (MMSR-6).

F. FOR ADVERSE DETERMINATION CASES, THE GCMCA SHALL FORWARD A COMPLETE COPY OF THE INVESTIGATION TO NAVPERSCOM (PERS-62). (PERS-62) WILL FORWARD TO CNP FOR REVIEW. CNP SHALL REVIEW THE LOD DETERMINATION AND UNDERLYING INVESTIGATION. THE DETERMINATION OF THE GCMCA SHALL BE SUSTAINED UNLESS CNP DETERMINES THAT A SUBSTANTIAL ERROR OCCURRED THAT COULD MATERIALLY AFFECT THE DETERMINATION. IN SUCH CASES, CNP CAN MAKE A DIFFERENT DETERMINATION OR RETURN THE CASE TO THE GCMCA FOR FURTHER INVESTIGATION. THE REVIEW AND DETERMINATION OF THE CNP SHALL BE ADMINISTRATIVELY FINAL.

7. THIS NAVADMIN DOES NOT CREATE OR VEST ANY RIGHT IN LAW OR EQUITY IN ANY PERSON. LOD DETERMINATIONS IN DEATH CASES ARE NOT SUBJECT TO JUDICIAL REVIEW.

8. JAGMAN CHANGES. THE JAGMAN CHANGES IMPLEMENTING REF A MAY BE FOUND AT [HTTP://WWW.JAG.NAVY.MIL/HTML/JAGVIRTUALLIBRARY.HTM](http://WWW.JAG.NAVY.MIL/HTML/JAGVIRTUALLIBRARY.HTM).

9. POINT OF CONTACT FOR LEGAL ISSUES CONCERNING LOD DETERMINATIONS SHOULD BE ADDRESSED TO THE LOCAL SJA OR OJAG CODE -15. POC FOR SBP MATTERS IS MR. BASIL COLEMAN AT (901) 874-4304/DSN 882, 1-800-255-8950, EXT 44304 OR FAX (901) 874-2611/DSN 882.

10. RELEASED BY VADM G. L. HOEWING, N1.//

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